that the vehicle carries, shall as respects such liabilities as are required to be covered by a policy under paragraph (b) of subsection (1) of section 4 be of no effect.

There was no allegation here that no policy existed. The basis of the charge would appear to be that one extra passenger was carried thus invalidating the insurance policy. This case and the other similar cases which I heard at Tawau and in which I allowed the appeals, the reasons for which I now reduce to writing, would never, if there had been proper preliminary investigation action, have been brought.

In the circumstances I do not think that accused's plea of guilty was an unequivocal one, I doubt if he understood the charge. Magistrates should be careful to record each plea, where there are more charges than one, separately and not as here in a compendium plea.

In the event and to avoid a miscarriage of justice I allowed the appeal against conviction quashed the conviction and sentence and discharged the accused.

Appeal allowed.

SYMES v. LING NGAN NGIENG

[O.C.J. (Gill J.) April 13, 1966]

[K.L. — Civil Suit No. 1130 of 1965]

Negligence — Child left unattended crossing road — Degree of care — Contributory negligence of child — Negligence of person in charge of child whether relevant — Damages.

Damages — Personal injuries — Facial disfigurement — Assessment of damages.

The infant plaintiff sued by her next friend for damages for personal injuries suffered as a result of her being knocked down by a motor car driven by the defendant when she was crossing the road. It appeared that the infant plaintiff had been left in a car by her mother, who had crossed the road, to go to a shop. Sometime later the infant plaintiff got out of the car and crossed the road in the direction in which she had seen her mother go. After she had crossed the middle of the road she was knocked down by the defendant's car.

As a result of the accident the plaintiff had a deep lacerated wound 6" long running across her face involving the nasal bone and the lower margin of the left orbit. She was left with a permanent disfigurement of her face by reason of two large and prominent scars. There was also a scar causing her left nostril to narrow as it went down. This had caused a certain amount of blocking of the left nostril which would obstruct the normal flow of the nasal discharge during cold. Furthermore, her mouth was slightly crooked to the left when she smiled because the muscles of her right cheek did not pull up the right angle of the mouth. The orthopaedic surgeon opined that plastic surgery might reduce the facial disfigurement to some extent; but the scars would still remain.

Held: (1) the defendant was entirely to blame for accident and must be held liable for damages;

(2) even if there was evidence of negligence on the part of the plaintiff in this case, in view of her age no contributory negligence could be attributed to her;

(3) the negligence of the person in charge of the child was no answer to the claim made by the plaintiff against the defendant;

(4) taking into account the pain and suffering that she must have undergone and the permanent disfigurement of her face which was likely to disappear completely by plastic surgery, general damages would be assessed at $10,000.

Cases referred to:—

(1) *Carmarthenshire County Council* v. *Lewis* [1955] A.C. 549.

(2) *Lynch* v. *Nurdin* (1841), 1 Q.B. 30.

(3) *Oliver* v. *Birmingham and Midland Motor Omnibus Co. Ltd.* [1933] 1 K.B. 35.

CIVIL SUIT.

Balwant Singh for the plaintiff.

Chew Kok Chooi for the defendant.

Cur. Adv. Vult.

Gill J.: The infant plaintiff in this case is suing by her next friend, who is her mother, for damages in respect of personal injuries suffered as a result of her being knocked down by motor car No. SB 3904 which was driven by the defendant when she was crossing the road at 2½ milestone, Klang Road, Kuala Lumpur.

The facts of the case are as follows. On 12th January, 1965 at about 7 p.m. the plaintiff's mother, Mrs. Kim Symes nee Lee Kim Lan, was travelling in her car from Petaling Jaya towards Kuala Lumpur with the infant plaintiff. On reaching 2½ milestone, Klang Road she parked her car on the left side of the road facing Kuala Lumpur, got out of it and crossed the road in order to deliver soiled laundry to a dhobi shop on the other side of the road, leaving the infant plaintiff in the car and closing its doors. As she was coming out of the dhobi shop after a few minutes she saw a car drive past very fast from the direction of Kuala Lumpur towards Petaling Jaya. As soon as the car went past, she heard a child's cry and saw the plaintiff picking up herself from the road. The plaintiff was then quite close to the grass verge on the left side of the road facing Petaling Jaya as she had almost reached the other side of the road. Mrs. Symes went towards her child and saw the car which had gone past stop at a place about 40 feet from where the child was. She then saw the defendant and another man go up to her child. The other man carried the child into the car and the three of them took her first to Assunta Hospital, where she was given first aid, and then to the General Hospital, Kuala Lumpur. On the way to Assunta Hospital and later to the General Hospital the defendant is alleged to have told Mrs. Symes that it was not his fault. He said that he did not see the child because she was too small. Later he said that he saw the child and tried to avoid her, but it was too late. He is

also alleged to have said that the lights of an oncoming car blinded him.

One Chua See Teck gave evidence to say that at about 7 p.m. on 12th January, 1965 he was coming out from Palace Hotel down Lorong Jugra towards Klang Road. He stopped at the junction to look at the traffic on both sides before entering Klang Road in order to proceed towards Petaling Jaya. On stopping at the junction ne noticed a car parked on the other side of the road, but there was no traffic from either side of the road. When he looked towards the left he noticed a little girl somewhere in the middle of the road moving across the road. Then he saw a car coming from the direction of Kuala Lumpur shoot past him. The car did not sound its horn, nor did it slow down as he did not hear any sound of application of brakes. He next saw the child being thrown towards the middle of the road. He had not expected the car to knock down the child because the child had crossed more than three-quarters of the road and was only about two feet from the edge of the road then. After the child was thrown he turned left into Klang Road, parked his car on the left side of the road, got out of the car and went towards the child to render assistance. By that time the man who had hit the child, another Chinese and the plaintiff's mother were already with the child. They quickly put the child in a car and drove towards Petaling Jaya. He heard them saying that they were going to Assunta Hospital. Later at about 9 p.m. the witness informed the plaintiff's father about the accident and accompanied him first to Assunta Hospital and then, not finding the child there, to the General Hospital.

The defendant's story is that on the day in question at about 7 p.m. he was driving his car SB 3904 along Klang Road at 25 to 30 miles per hour. There were cars in front of him and behind him, and there were cars passing from the opposite direction. On reaching the 2½ milestone he was keeping to his side of the road following the convoy. Suddenly he noticed a little child dashing across the road from his right to his left some 5 or 10 feet in front of him. He turned his car to the left to avoid the child and applied the brakes. Then he felt a bump on the right side of his car. After braking his car he went up to the child and heard her crying. A Mr. Wong who had come out of the car which was travelling behind him carried the child to his car. The mother of the child also came up. The defendant went on to say that he did have a conversation with the plaintiff's mother in the car, but denied that he told her that the lights of an oncoming car had blinded him. Under cross-examination he said that the child must have hit the door handle when he swerved to the left. When he first saw the child she was near the centre line about 30 feet away. The child went on moving. He did not hit the child. The child hit his car.

It seems clear from the evidence that the infant plaintiff got out of her mother's parked car and started walking across the road in the direction in which she had seen her mother go. It is equally clear that she got to the middle of the road without any trouble. This would seem to indicate that at that stage there were no cars travelling in the direction of Kuala Lumpur. If the defendant had been keeping a proper look-out he could not have failed to see the child walking across the road. Even assuming that he first saw the child when she was near the centre line, this should have put him on his guard to slow down. He has said that the child went on moving and that it was the child who hit his car. That may well be so, but the truth would appear to be that he took no steps to avoid running into the child by sounding his horn or reducing the speed. All the indications are that because he was not keeping a proper look-out he failed to see the child until it was too late to avoid hitting her. From the nature of the injury on the child it would seem clear that as he was swerving to the left the door handle of his car struck the child in the face. In the circumstances I find as a fact that the defendant was entirely to blame for the accident and hold him liable in damages.

It has been urged on behalf of the defendant that the plaintiff's mother was wholly to blame for the accident because she left her child unattended in a car parked on a busy road, and that consequently on the authority of *Carmarthenshire County Council* v. *Lewis* [1] the defendant is not liable. I do not agree. In my opinion that case has no application to the present case, as this is not a case against the mother for damages for her negligence in leaving the child unattended. Indeed, no negligence on the part of the mother was pleaded. What has been pleaded is contributory negligence on the part of the plaintiff.

As regards the question of contributory negligence on the part of the infant plaintiff, there is no evidence that she ran across the road. The evidence of the defendant himself is that she was moving across the road, although at one stage he said that he noticed the child dash across the road. Even assuming that the plaintiff was negligent, in view of her age no contributory negligence can be attributed to her. As was stated by Denman C.J. in *Lynch* v. *Nurdin*,[2] "Ordinary care must mean that degree of care which may reasonably be expected from a person in the plaintiff's situation; and this would evidently be very small indeed in so young a child." As regards allegation of negligence on the part of the mother, the law is that if a young child is injured through the negligence of the defendant and the negligence of a person in

charge of the child, the negligence of the person in charge is no answer to a claim made on behalf of the child against the defendant. (See *Oliver* v. *Birmingham and Midland Motor Omnibus Company, Limited* [3]).

As a result of the accident the plaintiff had a deep lacerated wound 6 inches long running across the face involving the nasal bone and the lower margin of the left orbit. The wound has healed satisfactorily, but she is left with a permanent disfigurement of her face by reason of two rather large and prominent scars, the first being 5 inches long and running from the right cheek astride the nasal bridge to the left cheek and the second being one inch long and below the right eye. There is also a scar causing the left nostril to narrow as it goes down. This has caused a certain amount of blocking of the left nostril which will obstruct the normal flow of the nasal discharge during a cold. Furthermore, the plaintiff's mouth is slightly crooked to the left when she smiles because the muscles of the right cheek do not pull up the right angle of the mouth. The orthopaedic surgeon has expressed the opinion that plastic surgery may reduce the facial disfigurement to some extent, but the scars will still remain. The estimated cost of such plastic surgery is said to be in the neighbourhood of $5,000.

That brings me to the question of damages. Special damages are agreed at $600. In assessing the general damages, apart from pain and suffering the main consideration is the disfigurement of the plaintiff's face. The plaintiff is a good-looking child. She looks bright and cheerful even after her disfigurement, but there is no doubt that the scars on her face will be a source of embarrassment to her throughout her life. It is always difficult to say in such cases to what extent the scars will affect her marriage prospects when she grows up, but that they will have some effect cannot be doubted. Taking into account the pain and suffering that she must have undergone and the permanent disfigurement of her face which is not likely to disappear completely by plastic surgery, I would assess general damages at $10,000. There will therefore be judgment for the plaintiff for $10,600 and costs.

Judgment for the plaintiff.

Solicitors: *Balwant Singh & Co.; Donaldson & Burkinshaw.*

KARUTHAN CHETTIAR v. PARAMESWARA IYER

[A.C.J. (Gill J.) April 13, 1966]

[K.L. — Civil Appeal No. 3 of 1966]

Moneylenders — Memorandum in writing of contract — Patent ambiguity — No indication whether date of interest was to be per annum or per month — Security for loan cash cheque for the amount lent — Production of statement of account in proceedings before the Court — Evidence Ordinance, 1950, s. 93 — Moneylenders Ordinance, 1951, ss. 8, 16 and 21(1).

This was an appeal against the decision of the magistrate who had dismissed an action by the plaintiff, a licensed moneylender, for the recovery of money lent to the defendant. In the memorandum which contained the terms of the contract in this case the provision relating to interest read "Rate of interest: 18% per annum/month". The learned magistrate held that by reason of this ambiguity the contract was not enforceable by reason of non-compliance with section 16(3)(c) of the Moneylenders Ordinance, 1951. At the hearing of the appeal the respondent's counsel also submitted that (a) the transaction was illegal and void as the security given in this case was a cash cheque for the amount of the money lent, and (b) a statement of account was not produced as required by section 21(1) of the Ordinance, as although a statement of account was exhibited to the statement of claim it was not signed by the plaintiff or his agent.

Held: (1) as the ambiguity in this case was a patent one, evidence could not be given *aliunde* and therefore as there was no indication whether the rate of interest was to be per annum or per month the learned magistrate was right in dismissing the action;

(2) in this case reference was made in the memorandum to the cheque by its number so that there could be no question of anybody other than the plaintiff being in a position to sue the defendant on the cheque and therefore the taking of the cheque did not render the contract illegal or void under section 8(b) of the Moneylenders Ordinance;

(3) what is required under section 21(1) of the Moneylenders Ordinance is the production of the statement of account when proceedings are taken in court and it is immaterial whether the statement is produced by the moneylender or his agent or their solicitors.

Cases referred to:—

(1) *Abirami Ammal & Anor.* v. *Meyappa Chettiar* [1959] M.L.J. 149, 151.

(2) *Kasumu* v. *Baba-Egbe* [1956] A.C. 539, 551.

(3) *Gulwant Singh* v. *Abdul Khalik* [1965] 2 M.L.J. 55.

(4) *Stirling* v. *John* [1923] 1 K.B. 557.

(5) *Shaffer* v. *Sheffield & Anor.* [1914] 2 K.B. 1.

(6) *Merz* v. *South Wales Equitable Money Society Ltd.* [1927] 2 K.B. 366, 371.

(7) *Victorian Daylesford Syndicate Ltd.* v. *Dott* [1905] 2 Ch. 624.

CIVIL APPEAL.

A. D. Rajah for appellant.

V. K. Palasuntharam for the respondent.

Cur. Adv. Vult.

Gill J.: This is an appeal against the decision of the magistrate, Kuala Lumpur dismissing an action by the plaintiff/appellant, who is a licensed moneylender, for the recovery of money lent to the defendant/respondent.

The case for the plaintiff briefly was that he lent the defendant a sum of $500 bearing interest at 18% per annum after a memorandum, as required by section 16 of the Moneylenders Ordinance, 1951 had been executed by the parties